IN THE ARBITRATION UNDER CHAPTER ELEVEN
OF THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE ICSID ARBITRATION (ADDITIONAL FACILITY) RULES
BETWEEN

MOBIL INVESTMENTS CANADA INC. AND MURPHY OIL CORPORATION,

Claimants/Investors,

-and-

THE GOVERNMENT OF CANADA,

Respondent/Party.

SUBMISSION OF THE UNITED STATES OF AMERICA

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1. Pursuant to Article 1128 of the North American Free Trade Agreement ("NAFTA") (the "Agreement"), the United States of America makes this submission on a question of interpretation of the Agreement. The United States does not take a position, in this submission, regarding how the interpretation it offers below applies to the facts of this case, and no inference should be drawn from the absence of comment on any issue not addressed below.

2. Article 1108, entitled "Reservations and Exceptions," provides that Articles 1102, 1103, 1106, and 1107 do not apply to certain non-conforming measures.[1] Under Article 1108(1)(a)(i), Articles 1102, 1103, 1106, and 1107 do not apply to "any existing non-conforming measure that is maintained by . . . a Party at the federal level, as set out in its Schedule to Annex I or III" to the Agreement. "Existing" is defined under Article 201(1) to mean "in effect on the date of entry into force of this Agreement."

3. In addition, Article 1108(1)(b) and Article 1108(1)(c) provide, respectively, that Articles 1102, 1103, 1106, and 1107 do not apply to the "continuation or prompt renewal" or to the "amendment" of any non-conforming measures set out in a Party's

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[1] *See* Article 1108; *see also* NORTH AMERICAN FREE TRADE AGREEMENT, IMPLEMENTATION ACT, STATEMENT OF ADMINISTRATIVE ACTION, H.R. DOC. NO. 103-159, Vol. 1, 103d Cong., 1st Sess. at 142 (1993) ("Article 1108 creates a system of limited 'reservations' and 'grandfathering' to exempt certain laws and regulations that are not in conformity with the non-discrimination, performance requirement and senior management obligations" in the Chapter).

Schedule to Annex I or Annex III to the Agreement, which include actions occurring after entry into force. Under Article 1108(1)(c), Articles 1102, 1103, 1106, and 1107 do not apply to an "amendment" of a non-conforming measure set out in a Party's Schedule to Annex I or Annex III only "to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1102, 1103, 1106, and 1107."

4. The headnote to Annex I of the Agreement, entitled "Reservations for Existing Measures and Liberalization Commitments," further provides that for each reservation, a "measure" identified in the "Measures" element of the Party's Schedule means "the measure as amended, continued or renewed as of the date of entry into force of this Agreement, and . . . includes any subordinate measure adopted or maintained under the authority of and consistent with the measure."[2]

5. By including subordinate measures that are "adopted or maintained" by a Party, the headnote to Annex I provides that each measure listed on a Party's Schedule pursuant to Article 1108(1) includes any existing subordinate measures—*i.e.* subordinate measures in effect on the date of entry into force—that are "maintained" by a Party, as well as any new subordinate measures—*i.e.* subordinate measures that come into effect after entry into force—that are "adopted" by a Party, so long as such subordinate measures are adopted or maintained under the authority of and consistent with the listed measure.[3]

6. This conclusion is confirmed by analyzing the text of Annex I in the context of other provisions in Chapter Eleven as well as the drafting conventions employed by the NAFTA Parties when negotiating the Agreement.

7. For example, the scope and coverage provision of Chapter Eleven, Article 1101, provides that Chapter Eleven applies to "measures *adopted or maintained* by a Party" relating to investors of another Party and their investments in the territory of the Party.[4] By using the phrase "adopted or maintained," the NAFTA Parties intended to include within the scope of Chapter Eleven not only existing measures that a Party might choose to *maintain* after the Agreement's entry into force, but also new measures that a Party might choose to *adopt* after entry into force. Such an understanding of the phrase "adopted or maintained" is consistent with the document entitled "Conventions to be used in the NAFTA Texts," which was drawn up by the NAFTA Parties to guide their negotiations. In that document, the NAFTA Parties indicated that they would use the term "adopt" when referring "to the establishment or introduction of *new* measures," and "maintain" when referring "to *existing* measures."[5]

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[2]Annex I at 2(f)(i)-(ii).

[3] *Id.* at 2(f)(ii).

[4] Article 1101(1) (emphasis added).

[5]*Conventions to be used in the NAFTA Texts*, at 3 (July 9, 1992) (emphasis added) (attached as Exhibit A). This document was a joint product of the NAFTA Lawyers' Subgroup, which was composed of representatives of the three Parties.

8. Similarly, under the headnote to Annex I, each measure listed on a Party's Schedule pursuant to Article 1108(1) includes any existing subordinate measure—*i.e.* one in effect on the date of entry into force—that a Party might choose to "maintain," and any new subordinate measure—*i.e.* one in effect only after entry into force—that a Party might choose to "adopt," so long as the subordinate measure is adopted or maintained under the authority of and consistent with the listed measure.

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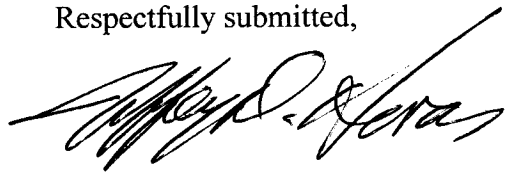
Dated: July 8, 2010

Respectfully submitted,



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